

Fair Political Practices Commission
MEMORANDUM

TO: Chairman Randolph, Commissioners Blair, Downey, Huguenin and Remy

FROM: C. Scott Tocher, Senior Counsel, Legal Division
Luisa Menchaca, General Counsel

DATE: April 5, 2005

SUBJECT: Adoption of Regulation 18465.1 - Eliminating Paper Copies of Quarterly Lobbying Disclosure Reports

EXECUTIVE SUMMARY

Under the electronic filing provisions of the Political Reform Act (“Act”), paper copies of electronically filed disclosure forms can be eliminated once it is determined that the electronic and online systems are operating effectively. (Gov’t. Code § 84606.)¹

The Commission and the Office of the Secretary of State jointly sponsored an interested persons’ meeting in November of 2004 to solicit input relating to the proposed elimination of paper copies of electronically filed lobbying disclosure reports, possibly beginning with the first quarter reports that are due May 2, 2005.² Commission staff also met on two occasions with senior staff of the Office of the Secretary of State to discuss the propriety of eliminating the paper filings of these reports and to outline the issues raised by such action. In January of this year, the Commission determined that the online filing system for lobbying activity reports functioned in a manner that no longer required paper filings. Among other recommendations, the Commission, with the agreement of the Office of the Secretary of State, determined a regulation was necessary to clarify the responsibilities of online filers once the paper copy was eliminated. The draft regulation, 18465.1, is brought back for adoption without change from the prenotice version considered in January.

I. BACKGROUND

The Online Disclosure Act of 1997, and as amended in 1999 and 2001, directed the Secretary of State to develop a system allowing the use of computers and computer software to collect and transmit data for internet display which previously was only available in paper format. To that end, the Secretary of State created a new system named CAL-ACCESS

¹ All statutory references are to the Government Code unless specified otherwise.

² Please note that paper copies of all lobbying *registration* forms will still be required. Moreover, the Commission and the Secretary of State at this time are only considering eliminating the paper filings in the context of lobbying disclosure and are not considering the propriety of eliminating the paper filings of state campaign reports.

(California Automated Lobbying And Campaign Contribution & Expenditure Search System). Under this system and pursuant to current law, lobbyists, lobbying firms and lobbyist employers must file electronically any reports required by the Act if they engage in reportable activity of \$5,000 or more in a calendar quarter. (§ 84605, subd. (d).) The CAL-ACCESS system allows the public to search the respective databases of electronically filed information.

Ultimately, one of the goals of the online disclosure provisions is to eliminate the duplicative paper filing requirement. Once the Secretary of State determines the filing system is running satisfactorily, the paper filing requirement is eliminated. This determination, however, must be made in consultation with the Commission. The requirements for elimination of the paper filing are found in section 84606, which provides:

“§ 84606. Operation of Online System.

“The Secretary of State shall determine and publicly disclose when the online and electronic disclosure systems are operating effectively. In making this determination, the Secretary of State shall consult with the Commission, the Department of Information Technology, and any other appropriate public or private entity. The online or electronic disclosure system shall not become operative until the Department of Information Technology approves the system. Upon this determination, filers required by this chapter to file online or electronically will no longer be required to file a paper copy or with local filing officers. Furthermore, the date that a filer transmits an online or electronic report shall be the date the filed report is received by the Secretary of State.”

The Office of the Secretary of State informed the Commission that the office was preparing to move forward with paperless filing of lobbying activity reports due for the first quarter of 2005, which are filed on May 2, 2005. In January of this year, the Commission determined that the system was ready for the elimination of paper filings of these reports. Nevertheless, an important issue remained with respect to the obligations and responsibilities of filers that the Commission wished to address, as discussed below.

One important issue inherent in the elimination of paper filings is the consequences from an enforcement perspective of the lack of a physical signature of the filer in the online filing format. Traditionally, paper forms must be signed by the filer signifying that the filer attests under penalty of perjury to the accuracy and completeness of the information disclosed on the form. When one files lobbying disclosure reports online, however, no such physical signature from the individual filing is present, of course. This issue is addressed in the online scheme in the Act, which states that “[i]t shall be presumed that online or electronic filers file under penalty of perjury.” (§ 84605, subd. (h).) Because a filer may designate a vendor or other service provider to file on his or her behalf, and in light of the presumption of subdivision (h) above that any filing is presumed made under penalty of perjury, the Commission determined in January

that it would be helpful to clarify in a regulation that the use of a third party vendor to make authorized filings does not insulate the filer from the perjury presumption of the statute. Since the vendor can file only if given the filer's password, it seemed fair to clarify that the perjury presumption on the filer remains regardless of whether he or she uses a third party vendor. The Commission determined that paper filings could be eliminated. The Commission also considered draft regulation 18465.1 to accomplish this purpose and requested staff bring the regulation back without change for formal adoption.

On March 2, 2005, the Secretary of State declared in accordance with section 84606 that the filing of duplicate paper copies of lobbying reports no longer is required. This applies to the Form 615, Lobbyist Report; Form 625, Report of Lobbying Firm; Form 635, Report of Lobbyist Employer and Report of Lobbying Coalition; Form 645, Report of Person Spending \$5,000 or More to Influence Legislative or Administrative Action; Form 630, Payments Made to Lobbying Coalitions; Form 635-C, Payments Received by Lobbying Coalitions; and, Form 640, Governmental Agencies Reporting of Other Payments to Influence, all of which are next due to be filed on May 2, 2005.

II. Proposed Regulation 18465.1.

Attached regulation 18465.1 implements the requirements of subdivision (h) of section 84605 by stating that any "filing made on behalf of a filer by a vendor or service provider authorized by the filer to make such filings is presumed filed under penalty of perjury by the filer."

Staff recommends the Commission adopt this regulation.